

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Polland, et al.  
Application No. : 10,565,877  
Filed : February 2, 2007  
Title : METHOD AND APPARATUS FOR ONLINE CONTACT LENS  
EVALUATION  
Group/Art Unit : 2873  
Conf. No. : 7934  
Docket No. : P03261

**COMMUNICATION**

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

On Wednesday, September 2, 2009, the undersigned attorney received a call from Examiner James Greece concerning this application. Examiner Greece stated that the pending claims had been found allowable and that the file had been forwarded to the Publication Division for review. The Publication Division had apparently questioned whether continuation data was missing from the text of the application. It was agreed that the undersigned attorney would investigate the state of priority claims made of record in this case and provide whatever amendments may be necessary to the Examiner. This letter reports the results of that investigation.

This application (United States Patent Application S.N. 10/565,877) was transmitted to the Patent and Trademark Office on January 23, 2006, as an express request to begin national examination procedures under 35 USC 371(f). An unsigned declaration accompanied this first transmission. Later, a signed declaration was submitted. In the Declaration, foreign priority claims were made under 35 USC §119 to the following applications:

<u>Country</u>	<u>Application Number</u>	<u>Date of Filing</u>
Germany	10333794.6	July 24, 2003
PCT	PCT/EP2004/008201	July 22, 2004

The PCT application identified in the §119 priority claim is the PCT application of which the present application is the national phase. This was in error. See MPEP § 1893.03(c) at the paragraph bridging the columns on page 1800-208 (Rev. 7, July 2008):

[A] national stage application submitted under 35 USC 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the international filing date of the international application. See also MPEP § 1893.03(b). Stated differently, since the international application is not an earlier application (it has the same filing date as the national stage), a benefit claim under 35 USC 120 in the national stage to the international application is inappropriate and may result in the submission being treated as an application filed under 35 U.S.C. 111(a). See MPEP § 1893.03(a). Accordingly, it is not necessary for the applicant to amend the first sentence(s) of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage.

While reference to the PCT application in the Declaration's §119 priority claim was in error, other documents submitted made it clear that this was an application under 35 USC 371. See, e.g., the 371 Acceptance Letter (Form PCT/DO/EO/903) sent to the Applicant on August 22, 2007. Applicant intended the application to be processed under 35 USC 371 (not 35 USC 111(a)) and it was. Thus it seems that the error in the Declaration has not caused confusion and should be considered harmless. However, if the Examiner, upon consideration of these circumstances, believes a new Declaration should be submitted, Applicant will endeavor to provide it.

The pre-grant publication of the application on November 29, 2007, accurately portrays the nature of the current application and the priority claim intended by the Applicant. See Attachment 1 to this letter. The application is identified as one filed under 35 USC 371. The priority claim to the German application is recited.

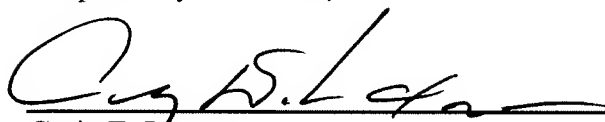
A certified copy of the German application upon which the priority claim is based was submitted to the European Patent Office as International Receiving Office on August 3, 2004. The International Bureau, in turn, received the priority document on February 17, 2005. It is present in the publicly available file of the International Application. See Attachment 2 to this letter.

The U.S. Patent and Trademark Office, as a Designated Office, will normally request the International Bureau to furnish the copy of the certified priority document upon receipt of a submission under 35 U.S.C. 371 to enter the U.S. national phase. See MPEP § 1893.03(c). The file of this application on Public PAIR does not indicate that such a request was made or fulfilled in this application.

Applicant hereby requests the USPTO to retrieve an electronic copy of German Patent Application 103 33 794.6 filed July 24, 2003, a certified copy of which was submitted to the European Patent Office on August 3, 2004 and was deposited with the International Bureau on February 17, 2005.

Applicant has endeavored to respond to the concerns conveyed by the Examiner in his September 2<sup>nd</sup> conversation with the undersigned attorney. If this submission does not resolve those concerns, the Examiner is invited to contact the undersigned to resolve any remaining issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig E. Larson", written over a horizontal line.

Craig E. Larson

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Dated: September 15, 2009

## **Attachment 1**



US 20070273828A1

(19) **United States**(12) **Patent Application Publication**  
**Polland et al.**(10) **Pub. No.: US 2007/0273828 A1**(43) **Pub. Date: Nov. 29, 2007**(54) **METHOD AND APPARATUS FOR ONLINE  
CONTACT LENS EVALUATION****Publication Classification**(76) **Inventors:** Hans-Joachim Polland, Wolfratshausen  
(DE); Stefan Seltz, Germering (DE);  
Kristian Hohla, Vaterstetten (DE);  
Gerhard Youssefi, Landshut (DE);  
Ernst Hegels, Kirchheim (DE); Birte  
Jansen, Munchen (DE); Christoph  
Sappel, Grunwald (DE)(51) **Int. Cl.****A61B 3/10** (2006.01)**G02C 7/02** (2006.01)(52) **U.S. Cl.** ..... **351/204; 351/160 R**

(57)

**ABSTRACT**

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**One Bausch & Lomb Place**  
**Rochester, NY 14604-2701 (US)**(21) **Appl. No.: 10/565,877**(22) **PCT Filed: Jul. 22, 2004**(86) **PCT No.: PCT/EP04/08201**

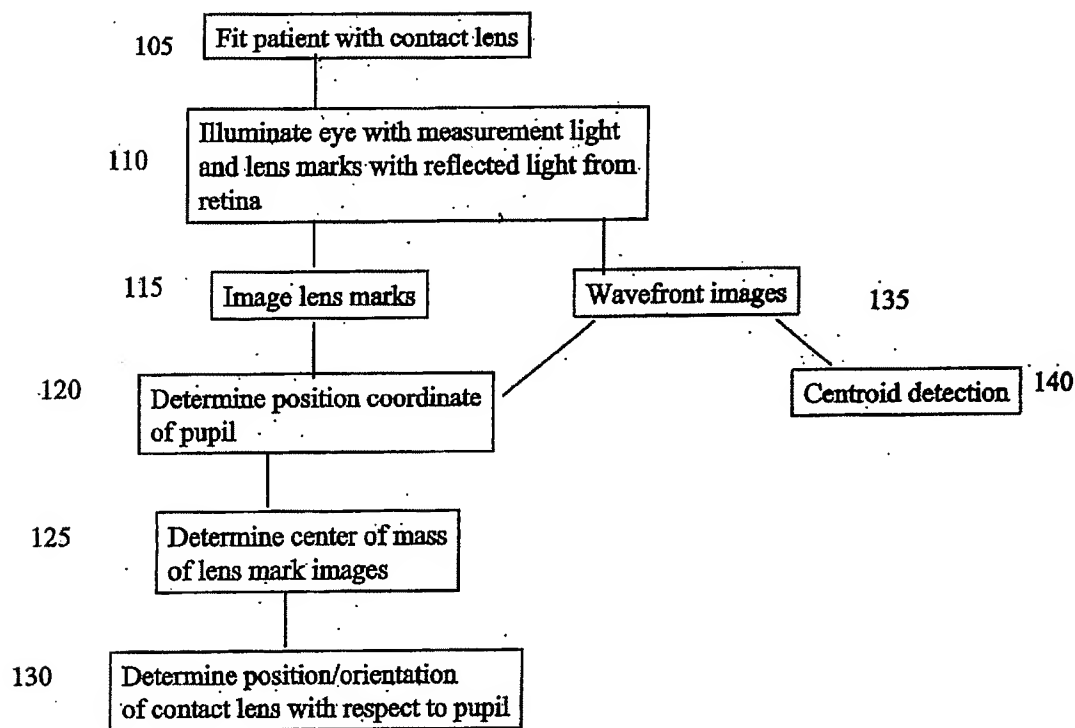
§ 371(c)(1),

(2), (4) **Date: Feb. 2, 2007**(30) **Foreign Application Priority Data**

Jul. 24, 2003 (DE)..... 10333794.6

A selectively marked contact lens having, in one aspect, marks in an optical zone region on a surface thereof and, in another aspect, different marks outside an optical zone region of the lens, for an in-vivo lens. With the lens in-vivo, the subject's eye is illuminated and the lens is imaged. A fast algorithm is used to determine the mark coordinates in relation to a measured pupil coordinate to determine position and/or orientation of the contact lens. A wavefront aberration measurement can also be obtained simultaneously with the contact lens position measurement, as well as pupil size. A fast algorithm provides for online measurements; i.e., at a repetition rate of 10 Hz or greater, over a selected time interval. Blinking periods are determined and anomalous lens position and/or wavefront information is discarded. A most frequently occurring wavefront and/or contact lens position/orientation is determined over the selected time interval.

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## **Attachment 2**



Search result: 1 of 1

**(WO/2005/015290) METHOD AND APPARATUS FOR ONLINE CONTACT LENS  
EVALUATION**[Biblio. Data](#)[Description](#)[Claims](#)[National Phase](#)[Notices](#)[Documents](#)**International Application Status**

Date	Title		
03.09.2009	International Application Status Report	<a href="#">view</a>	<a href="#">download</a>

**Published International Application**

Date ▼	Title		
12.05.2005	Later publication of international search report (A3 19/2005)	<a href="#">view</a>	<a href="#">download</a>
17.02.2005	Initial Publication without ISR (A2 07/2005)	<a href="#">view</a>	<a href="#">download</a>

**Related Documents on file at the International Bureau (more information)**

Date ▼	Title		
24.01.2006	Written Opinion of the International Search Authority	<a href="#">view</a>	<a href="#">download</a>
24.01.2006	International Preliminary Report on Patentability Chapter II (IPEA/409)	<a href="#">view</a>	<a href="#">download</a>
17.02.2005	DE 103 33 794.6 24.07.2003 (Pr. Doc.)	<a href="#">view</a>	<a href="#">download</a>